

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MICHAEL WINSTON,	:	CIVIL NO: 1:10-CV-00867
	:	
Plaintiff	:	
	:	(Judge Conner)
v.	:	
	:	(Magistrate Judge Smyser)
EDWARD RENDELL,	:	
TOM CORBETT,	:	
FRANK E. PAWLOWSKI and	:	
MICHAEL P. DALEY,	:	
	:	
Defendants	:	

REPORT AND RECOMMENDATION

The plaintiff, proceeding *pro se*, commenced this action by filing a complaint on April 23, 2010.

The defendants named in the complaint are: 1) Edward Rendell, the Governor of Pennsylvania; 2) Tom Corbett, the Attorney General of Pennsylvania; 3) Frank E. Pawlowski, the Commissioner of the Pennsylvania State Police; and 4) Michael P. Daley, an attorney with the Administrative Office of the Pennsylvania Courts.

The plaintiff alleges that he has been assaulted and arrested numerous times. He alleges that his civil rights have been violated and that he has filed cases in the United States District Court for the Western District of Pennsylvania and in

the Pennsylvania courts. He alleges that he has not received fair treatment in connection with his court cases. He alleges that for years he has called and sent packages to the offices of defendants Rendell and Corbett complaining about the violation of his rights. He alleges that defendant Rendell has refused to acknowledge his complaints. He alleges that he spoke to an agent in the Attorney General's office who merely advised him to sue the individuals about whom he had complained. He alleges that on one occasion he spoke directly to defendant Pawlowski who told him his complaints were a local matter or a federal civil rights matter. He alleges that defendant Daley is responsible for the judicial misconduct of the state judiciary. He alleges that defendant Daley's name appears on documents relating to one of his cases in federal court. A review of the docket sheet for *Winston v. Morgan*, 1:09-CV-00225-SJM (W.D.Pa.), indicates that defendant Daley is the attorney for the state judicial defendants in that case.

By a Report and Recommendation dated May 3, 2010, we recommended that the complaint be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and that the case file be closed. We indicated that, since the plaintiff is seeking to hold the defendants liable on the basis of *respondeat superior* and since

failure of officials in the positions of the defendants to respond to the plaintiff's complaints is not a violation of the plaintiff's constitutional rights, the plaintiff should not be granted leave to amend his complaint since amendment would be futile.

By an Order dated June 29, 2010, Judge Conner adopted in part and rejected in part that Report and Recommendation. Judge Conner adopted the Report and Recommendation insofar as it recommended that the complaint be dismissed for failure to state a claim upon which relief may be granted. Judge Conner rejected the Report and Recommendation insofar as it recommended that the plaintiff not be granted leave to amend the complaint. Judge Conner ordered that the plaintiff is permitted to file, on or before July 20, 2010, an amended complaint that alleges that each of the defendants was personally involved in the civil rights violations for which he seeks relief. Judge Conner noted that failure to file an amended complaint shall result in the complaint being dismissed with prejudice.

The plaintiff has not filed an amended complaint. Nor has he filed a motion for an extension of time to file an amended complaint.

In accordance with the Order of June 29, 2010, it is recommended that the complaint be dismissed with prejudice and that the case file be closed.

/s/ J. Andrew Smyser

J. Andrew Smyser
Magistrate Judge

Dated: August 16, 2010.